store on the ground floor of the Company's premises to a box on the first floor, it was not proved that they had been removed out of the possession of the Company. I concede that to constitute theft there must be an intention to take dishonestly any movable property out of the possession of another person without that person's consent. But in my judgment, it is sufficient if the person who has formed such dishonest intention moves that property in order to such taking; and it is not necessary for him to move that property out of the possession of the other person. This is clear from section 378 of the Penal Code which reads:

"Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft."

I accordingly find no substance in the first submission.

The second submission was that the act of the appellant amounted merely to preparation and not even to an attempt to commit theft. I find no substance in this point. The requisite dishonest intention was established beyond reasonable doubt. The offence of theft was committed as soon as the accused moved the property in order to the dishonest taking. This is clear from section 378.

For these reasons I dismiss the appeal and affirm the conviction and sentence.

Appeal dismissed.

Solicitors:—*Murugason & Co.*

A. MOHAMED SHARIFF & CO. LTD. v. MOHAMED HUSSAIN

[O.C.J. (Winslow J.) August 19, 1963]

[Singapore — Suit No. 1181 of 1963]

Bankruptcy and insolvency—Offer of composition to creditors—Acceptance of offer by all creditors—Subsequent refusal by one creditor to accept amount under the offer of composition—Claim for full sum due—Whether creditor precluded from claiming full sum.

The defendant made an offer of composition to all his creditors at a meeting including the duly authorised representative of the plaintiffs and his offer of composition was accepted by all the creditors. Subsequently, the plaintiff company refused a cheque for the amount due under the composition and filed a claim for the full sum due.

Held: (1) a creditor cannot bring an action for the full debt where other creditors have been induced to join him in a composition with the debtor under such circumstances that each party gives the rest reason to believe that in consequence of the agreement to the composition his demand for the full debt will not be enforced. This, in fact, amounts to a new agreement, substituted for the original contract with the debtor, the consideration to each creditor being the engagement of the others not to press their individual claims; *Good* v. *Cheeseman*(1) followed;

(2) the fact that such a composition agreement was verbally made was no bar because such a composition agreement may be made verbally or in writing or partly in writing and partly verbally.

Case referred to:—

(1) *Good* v. *Cheeseman* 109 E.R. 1167.

ACTION.

Edwin D'Souza for the plaintiff.

A. Muthuswamy for the defendant.

Cur. Adv. Vult.

Winslow J.: The plaintiff claims a sum of $4,314.79 in respect of goods sold and delivered to the defendant. It is not disputed by the defendant, however, that such a sum was in fact outstanding prior to the month of October 1961 when, according to the defendant, an offer of composition was made by him to pay off all his creditors rateably out of the proceeds of a "closing down sale" of his stock-in-trade as he was unable to pay all his debts in full. This offer, according to the defendant, was accepted by all the creditors present, including the plaintiff, at a creditors' meeting held on 18th October, 1961. In due course the closing-down sale netted $19,031.65 which was able to yield a dividend of nearly 40 per cent to each of such creditors. The plaintiff however refused to collect a cheque for the amount due to him. All the others present at the meeting however collected the amounts due to them under this arrangement.

It is significant that at this meeting of the creditors an offer by the plaintiff company represented by Mohamed Shariff, a director of the company, to purchase the entire stock-in-trade of the defendant for 30 per cent of the total value of the debts due to all creditors and to keep the excess over and above this amount for himself was rejected. An alternative proposal was put forward by P. R. Sachdev, D.W.1. the largest creditor, that he would collect the proceeds of sale daily from the defendant and make distribution rateably amongst all creditors on completion of the "closing-down sale". This was put to the creditors present and accepted. The plaintiff remained at the meeting throughout but made no protest.

As against this version of what took place at the meeting of creditors, Mohamed Shariff, representing the plaintiff company, stated that he did not accept this offer of composition and that he walked out of the meeting when his own offer had been rejected. He further stated that he had, in fact, had a private arrangement with the defendant before the meeting whereby the defendant offered to pay him his debt in full. He

added that even after the meeting the defendant assured him that he would be paid in full. He agreed that this was a fraudulent preference but he explained that he was more interested in his own debt than in those due to the other creditors and that there was nothing to prevent the defendant from making a similar fraudulent arrangement with some of the other creditors. I reject this suggestion on his part that the defendant was a party to any such fraud. In my opinion the defendant was a thoroughly honest man who was doing his best to prevail on all his creditors to accept a lesser rateable distribution which would be fair to all. Although he told them that he would, despite the composition, try to pay them all in full at some later date, if possible, this was due to his emotional state and I am satisfied that he did not intend to prefer any one or more of them to the disadvantage of the others.

On the evidence, I find, as a fact, that Mohamed Shariff did not walk out of the meeting before the proposal put to the meeting on behalf of the defendant had been accepted. Not one single question was directed to the witnesses for the defence either to confirm or to negative this walk-out on his part. Even his counsel confessed to ignorance of this and I can only conclude that the idea of a walk-out was an improvisation made on the spur of the moment in the witness-box to strengthen his case. I am satisfied that he did remain at the meeting until its conclusion and that he acquiesced in the proposal that all the creditors should be paid equally out of the proceeds of sale of the defendant's stock-in-trade. I am also satisfied that he made no protest whatsoever and that, if he was disgruntled at all during the meeting, this was because his own offer to enrich himself at the expense of the other creditors had been rejected. It should be noted that, although he offered only about $14,000 for the entire stock-in-trade of the defendant, his own valuation, as given in evidence, was that it was worth about $16,000 or $17,000. The goods were in fact sold for $19,000 which he agreed was a good return.

His conduct in the matter throughout seems to me to be such that, in my opinion, it would be unconscionable to allow him, in all the circumstances, to exact or recover payment in full after he had led the other creditors at the meeting to believe that he was "in the same boat" as themselves, all sharing rateably in the proceeds, and thereby induced them to exercise forbearance in demanding the full amounts due on their own respective claims.

It is clear from the authorities that —

"A creditor shall not bring an action, where others have been induced to join him in a composition with the debtor; each party giving the rest reason to believe that, in consequence of such engagement, his demand will not be enforced. This is, in fact, a new agreement, substituted for the original contract with the debtor, the consideration to each creditor being the engagement of the others not to press their individual claims." (*per* Lord Tenterden C.J. in *Good* v. *Cheeseman*[1]).

Such a composition agreement may be made verbally or in writing or partly in writing and partly verbally. (*Halsbury's Laws of England* 3rd Edn. Vol. 2 at page 609). Although it usually takes the form of an agreement in writing the fact that, as in the present action, it was made verbally is no bar to acceptance of the fact of its existence provided I am satisfied, as indeed I am, that it is proved to have been duly made.

The defendant accordingly succeeds in his submission that only the sum of $1,738.90 is due to the plaintiff under the composition agreement.

The plaintiff company will therefore receive judgment in that amount but will be condemned in the costs of this action as its representative has failed hopelessly in his almost impertinent, if not dishonest attempt, to rebut the defendant's assertion that the composition was lawful and binding on him and that it discharged the original debt.

Judgment for the plaintiff.

Solicitors:—*Abishega-Naden & Co.; Muthu & Co.*

RE MISKIN ROWTER

[O.C.J. (Tan Ah Tah J.) August 23, 1963]

[Singapore — Originating Summon No. 120 of 1962]

Infant—Custody—Illegitimate child—Principles to be considered—Guardianship of Infants Ordinance (Cap. 16), s.6

When considering the question of the custody of an illegitimate child, two principles, among others, have to be borne in mind: (a) the court must have regard primarily to the welfare of the infant; the paramount consideration must be the welfare of the infant; (b) the wishes of the natural mother should be considered.

In the circumstances of this case having regard to the two principles and exercising the court's discretion the applicant should have the custody of the infant because that would result in the infant not only living with his natural mother but with his natural father as well, although the infant told the Judge in Chambers that he wished to remain with the respondent.

Cases referred to:—

(1) *The Queen* v. *Nash* (1883) 10 Q.B.D. 458.

(2) *Barnardo* v. *McHugh* [1891] A.C. 388.

ORIGINATING SUMMONS.

R. Ramason for the applicant.